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ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

W.J. "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

December 6, 2001

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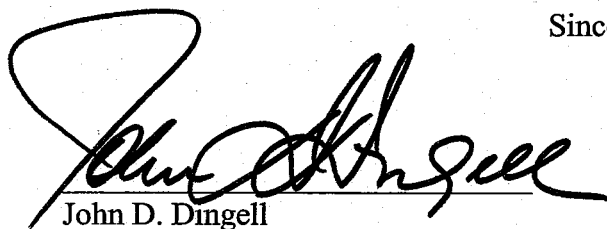
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The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

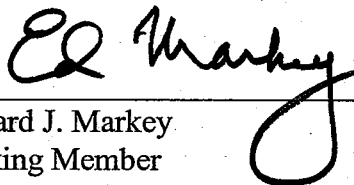
Dear Mr. Chairman:

We are writing with respect to the proposed legislation implementing the settlement agreement by and among the United States, the Federal Communications Commission, Nextwave Telecom, and participating Auction 35 winning bidders. This settlement agreement and implementing legislation have profound implications for the American taxpayer and for future telecommunications and spectrum management policy. Therefore, in connection with this Committee's upcoming hearing on this matter, and the Commission's request for expedited consideration of the parties' legislative proposal, we request responses to the attached questions by 6:00 p.m. on Monday, December 10, 2001.

Sincerely,



John D. Dingell
Ranking Member
Committee on Energy and Commerce



Edward J. Markey
Ranking Member
Subcommittee on
Telecommunications and the Internet

Attachment

QUESTIONS RE: NEXTWAVE SETTLEMENT

1. How much money will Nextwave receive as a result of the proposed settlement, before and after Federal income taxes? Does Nextwave now or has it ever provided a commercial mobile service using the licenses obtained in Auction 5? Please explain applicable Commission rules relating to: a) the required holding period for licenses assigned to a designated entity; b) the build-out requirements for such licenses; c) avoidance of unjust enrichment associated with early transfer or assignment of such licenses; and d) to whom such early transfer or assignment normally would be permitted.
2. Please state which rules, if any, described in your answers to questions 1(a), (b), (c), and (d) would need to be waived by the Commission to effectuate the settlement agreement proposed by the parties. What statutory provisions, if any, would need to be amended by Congress?
3. For each Auction 35 winner participating in the settlement, please state whether such winner qualifies for designated entity status under current Commission rules. Has the Commission conducted any pre- or post-auction audits to validate these qualifications? Under the settlement, what can the Commission do if it subsequently finds, or is made of aware of, information that parties to the settlement are in violation of the designated entity rules or other Commission rules with respect to qualifying for such licenses?
4. The settlement agreement permits certain participating Auction 35 winners, at their discretion, to withdraw all their bids for Auction 35 licenses without penalty and receive a refund of all monies paid to the Government. In the past, has the Commission ever allowed winning auction bidders to cancel their bids and, if so, under what circumstances? Were these bidders permitted a full refund of monies paid? If not, what is the policy justification for this disparate treatment?
5. What action, if any, has the Commission taken on the Alaska Native Wireless-Verizon-VoiceStream petition filed July 19, 2001, to initiate an investigation and audit regarding the eligibility of Nextwave to hold C- and F-Block licenses?
6. If the Commission has conducted an investigation or audit of the matters raised in the above petition, what specific findings has it made? If no investigation or audit has been performed, please explain why not.
7. Is the Commission satisfied that Nextwave is currently a qualified licensee under the agency's (a) designated entity, and (b) foreign ownership rules? Please explain the basis for each conclusion. Have any pre- or post-auction audits been performed to validate such conclusions?
8. Has the Commission evaluated Nextwave's proposed financial structure contained in its

Second Plan of Reorganization dated August 6, 2001, to determine whether the company would qualify as a designated entity under the agency's rules if such plan were adopted? If so, what conclusions has the Commission drawn? If no evaluation has been performed, or no conclusions were drawn from such an evaluation, please explain why not.

9. Has the Commission evaluated how the proceeds of the settlement payable to Nextwave would be distributed between its control group and non-control group investors? Would such a distribution comply with Commission rules and precedents relating to licenses issued pursuant to Section 309(j) of the Communications Act and subsequently transferred or assigned? Would such a financial distribution comply with special Commission rules, if any, relating to licenses transferred or assigned by designated entities?
10. Does the Commission believe that the instructions of the D.C. Circuit remand "for proceedings not inconsistent with this opinion" preclude the agency from further consideration of whether Nextwave is a qualified licensee under other applicable Commission rules? If not, has the Commission undertaken any further proceedings for this purpose?
11. Does the Commission have any reasonable basis to believe that Nextwave may not be entitled to reinstatement of its licenses (other than the arguments forming the basis for its petition for writ of certiorari to the U.S. Supreme Court)? If so, please explain.
12. Why has the Commission failed to rule upon the merits of the Antigone-Devco petition originally filed on March 17, 1997, or upon the subsequent request of the parties to withdraw it on June 1, 1998?
13. One of the recipients of frequencies to be relinquished under the proposed settlement is Voicestream Wireless, which is effectively owned by Deutsche Telekom. What is the current level of German government ownership of Deutsche Telekom?
14. In its 5th Report and Order (1994), the Commission adopted rules to fulfill Congress's mandate to ensure that small businesses, rural telephone companies, and businesses owned by minorities and women were given the opportunity to participate in the provision of broadband PCS. Please explain whether, and specifically, how, the settlement proposed by the parties meets this objective.
15. The settlement agreement reflects a decision by the Commission to limit its negotiations to Nextwave and participating Auction 35 winners. Specifically, and as to each of them, please describe what legal claims of Verizon Wireless or any other party to the settlement (a) were pending at the time the Commission began negotiations with them, and (b) are pending now. Please give all relevant details for each party, including date of filing,

stated basis for the claim, and status on the day negotiations began and status today.

16. Did the Auction 35 rules contain any provisions to protect the Government from potential claims by Auction 35 winners? If so, please state these provisions. If not, why not?
17. You have described the settlement as "a resolution that maximizes the public interest." We, too, support a public interest resolution to this matter and are curious as to what public interest conditions the Commission sought to obtain in the settlement agreement with the parties. Does the settlement agreement include any conditions on the companies that will receive relinquished frequencies that such companies will expedite their deployment of E-911 safety technology, commit to the rapid deployment of digital capability to geographic areas within their licensed markets currently still predominantly utilizing analog technology, commit to grant free or discounted service to educational institutions, or commit to anything else that could be characterized as activity that "maximizes the public interest"?
18. Did the Commission request any such public interest commitments from parties receiving the Nextwave frequencies?